

Waiver means excusing recipients from following certain anticipated regulatory or administrative requirements if; the authority to issue a waiver is provided in the regulation itself; and the Agency believes sufficient justification exists to approve such action. The Award Official has the authority to issue a waiver. Deviation means an exemption from certain provisions of existing regulations, which may be necessary in some unforeseen instances. The Director, Grants Administration Division, is authorized under 40 CFR 30.1001(b) to approve deviations from the requirements of regulations (except for those that implement statutory or executive order requirements) when such situations warrant special consideration.

§ 35.4013 Cost principles.

(a) Recipients and non-profit contractors must comply with the cost principles in OMB Circular A-122.

(b) Profit-making contractors and subcontractors must comply with the cost principles in the Federal Acquisition Regulation (48 CFR part 31).

§ 35.4015 State administration of the program.

(a) Effective October 1, 1992, the Agency will accept applications for and award TAGs in consultation with the States.

(b) The TAG Program will be available at an NPL site where a State response action is scheduled to begin or is underway and a CERCLA-funded cooperative or other written agreement exists between the Agency and the State.

(c) States wishing to administer the TAG Program must inform the appropriate EPA Regional administrator. If a State elects to administer the program, it must do so in conformity with this subpart. Where States administer the program, EPA will have an oversight role.

(d) A State that chooses to administer the TAG Program will receive technical assistance funds plus administrative costs from the Agency under a cooperative agreement. A State will receive \$10,000 for administrative costs for the first TAG. For each subsequent TAG, the State will receive an amount

equal to eight (8) percent of the TAG. Using the criteria established under this subpart, the State may select a qualified recipient and provide assistance in either of two ways:

(1) A State will pass through technical assistance funds to a recipient group by way of a subgrant, and reimburse the recipient group for its expenditures as provided at § 35.4080. A State that elects this option is also responsible for monitoring the subgrant to ensure that recipients comply with its terms and with 40 CFR parts 30 and 33; or

(2) If a recipient group agrees, a State will use TAG funds to obtain the services of a Technical Advisor and provide those services to a grant recipient in lieu of cash. The recipient group may work closely with the State in advertising, reviewing bids and recommending a Technical Advisor, and managing the Technical Advisor. The State will make the final selection of the technical advisor. A State that elects this option becomes directly responsible for awarding the technical assistance contracts, submitting financial and progress reports, and for disbursing all TAG funds in compliance with applicable EPA regulations and requirements.

§ 35.4020 Responsibility requirements.

(a) An applicant must meet the minimum administrative and management capability requirements 40 CFR 30.301. Thus each applicant must demonstrate that it has established reliable procedures or has plans for establishing reliable procedures for record-keeping and financial accountability related to the management of the TAG. These procedures must be in effect before the recipient incurs any costs. If EPA concludes that the applicant is not capable of meeting the responsibility requirements, the application will be rejected.

(b) Each recipient of a TAG must be incorporated as a non-profit organization for the purpose of addressing the Superfund site for which the grant is provided in order to receive a grant, except as provided in paragraph (c) of this section. At the time of award, a recipient must either be incorporated or must demonstrate to EPA that the

group has filed the necessary documents for incorporation with the appropriate State agency. No later than the time of the first request for reimbursement for costs incurred, a recipient must submit proof to EPA that the group has been incorporated by the State.

(c) Unless a consolidation agreement makes site-specific incorporation necessary, a previously incorporated group that includes all the individuals and groups that joined in applying for the TAG shall not be required to reincorporate for the specific purpose of representing affected individuals at the site provided that the group can demonstrate that it has a substantial history of involvement at the site.

§ 35.4025 Eligible applicants.

Eligible applicants, except as provided in § 35.4030, are any group of individuals that may be affected by a release or a threatened release at any facility that is listed on the NPL or is proposed for listing under the NCP and at which a response action has begun.

§ 35.4030 Ineligible applicants.

(a) Potentially responsible parties (PRPs) are ineligible to receive or be represented in groups receiving or using TAGs.

(1) No group established or sustained by a PRP shall be eligible for a TAG.

(2) No group that receives services provided by or paid for by a PRP shall be eligible for a TAG.

(3) For an applicant to obtain a grant it must establish an identity separate from that of an entity that is ineligible under § 35.4030 (a)(1) or (2) by making a reasonable demonstration of independence from the ineligible entity. Such a demonstration requires, at a minimum, a showing that the applicant has a formal legal identity (e.g., officers) and a substantive existence, including finances, separate and distinct from that of the ineligible entity.

(b) The following groups and organizations are also ineligible to receive or be represented in groups receiving or using TAGs.

(1) Corporations that are not incorporated for the specific purpose of representing affected individuals at the site except as provided in § 35.4020(c);

(2) Academic institutions;

(3) Political subdivisions (e.g., townships and municipalities); and

(4) Groups established or presently sustained by ineligible entities under § 35.4030 (b) through (c) (including emergency planning committees and citizen advisory boards who may be precluded from acting independently).

(c) This section shall not preclude any individual affected by a Superfund site from participating in a recipient group in his or her capacity as an individual. However, an individual whose financial involvement in a PRP (as other than an employee or contractor) is determined by the Award Official to be sufficiently substantial may be precluded from participation in a recipient group in any capacity.

§ 35.4035 Evaluation criteria.

(a) EPA will award a TAG only after it has determined that all eligibility and responsibility requirements listed in §§ 35.4020, 35.4025, and 35.4030 are met, and after review of the applicant's qualifications in the narrative section of the grant application. Each applicant will be required to provide information on how it meets the eligibility criteria in the grant application. The "Applicant Qualifications" section is Part IV of SF-424.

(b) *Sole applicant.* After the Letter of Intent process (see § 35.4040), if there is still only one group, the evaluation process will consist of the Agency ensuring that the applicant meets the criteria stated in § 35.4035(c) in addition to the administrative and management capability requirements, and can demonstrate that it is representative of the community affected by a release or a threatened release at a facility that is listed on the NPL or is proposed for listing under the NCP and where a response action has begun, as demonstrated by fulfillment of the criteria in § 35.4035(c). Once these requirements have been met by the sole applicant, the Agency may award a TAG.

(c) *Multiple applicants.* Where there are competing applicants EPA will evaluate the strengths and weaknesses of each applicant. EPA will rank each applicant relative to other applicants. Each criterion is assigned a weight showing its relative importance. EPA